

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
OF THE STATE OF CALIFORNIA**

AB-8651

File: 20-349900 Reg: 06062635

CHEVRON STATIONS, INC., dba Chevron Station 1867
4290 Via Real, Carpinteria, CA 93013,
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Administrative Law Judge at the Dept. Hearing: Ronald M. Gruen

Appeals Board Hearing: December 6, 2007
Los Angeles, CA

ISSUED MARCH 13, 2008

Chevron Stations, Inc., doing business as Chevron Station 1867 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control¹ which suspended its license for 10 days for appellant's clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Chevron Stations, Inc., appearing through its counsel, Ralph B. Saltsman, Stephen W. Solomon, and Ryan M. Kroll, and the Department of Alcoholic Beverage Control, appearing through its counsel, David W. Sakamoto.

¹The decision of the Department, dated November 2, 2006, is set forth in the appendix.

FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on March 4, 1999. The Department apparently filed an accusation against appellant charging that, on February 20, 2006, appellant's clerk sold an alcoholic beverage to 19-year-old Francisco Montelongo. Montelongo was working as a minor decoy for the Santa Barbara Sheriff's Department at the time.

At the administrative hearing held on September 6, 2006, documentary evidence was received and testimony concerning the sale was presented. The evidence established that when Montelongo took a can of Coors beer to the counter, the clerk asked to see his identification. Montelongo gave the clerk his valid California driver's license which showed his date of birth and carried a red stripe saying he would be 21 years old in 2007. Nevertheless, the clerk sold the beer to the decoy.

The Department's decision determined that the violation charged was proved, and no defense was established. Appellant then filed an appeal contending the administrative law judge (ALJ) improperly denied appellant's motion to compel discovery, and the Department violated prohibitions against ex parte communications with the decision maker.²

DISCUSSION

I

Appellant asserts in its brief that the ALJ improperly denied its pre-hearing motion to compel discovery. Its motion was brought in response to the Department's

²Appellant also filed a motion asking the Board to augment the record with any Report of Hearing in the Department's file for this case. Our decision on the ex parte communication issue makes augmenting the record unnecessary, and the motion is denied.

failure to comply with those parts of its discovery request that sought copies of any findings or decisions which determined that the present decoy's appearance was not that which could be generally expected of a person under the age of 21 and all decisions certified by the Department over a four-year period which determined that any decoy failed to comply with rule 141(b)(2). For all of the decisions specified, appellant also requested all photographs of the decoys in those decisions.

ALJ Gruen, who heard the motion, denied it because he concluded it would cause the Department an undue burden and consumption of time and because appellant failed to show that the requested items were relevant or would lead to admissible evidence. Appellant argues that the items requested are expressly included as discoverable matters in the APA and the ALJ used erroneous standards in denying the motion.

This Board has discussed, and rejected, this argument numerous times before. Just as appellant's arguments are the same ones made before, our response is the same as before. We see no reason to again go over our reasons for rejecting these arguments. Should appellant wish to review those reasons, it may find them fully set out in *7-Eleven, Inc./Virk* (2007) AB-8577, as well as many other Appeals Board opinions.

II

Appellant contends the Department violated the Administrative Procedure Act (APA)³ by transmitting a report of hearing, prepared by the Department's advocate at the administrative hearing, to the Department's decision maker after the hearing but before the Department issued its decision. It relies on the California Supreme Court's holding in *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control*

³Government Code sections 11340-11529.

Appeals Board (2006) 40 Cal.4th 1 [145 P.3d 462, 50 Cal.Rptr.3d 585] (*Quintanar*) and an appellate court decision following *Quintanar, Chevron Stations, Inc. v. Alcoholic Beverage Control Appeals Board* (2007) 149 Cal.App.4th 116 [57 Cal.Rptr.3d 6]. It asserts that, at a minimum, this matter must be remanded to the Department for an evidentiary hearing regarding whether an ex parte communication occurred.

The Department disputes appellant's allegations of ex parte communications and asks the Appeals Board to remand this matter so that the factual question of whether such a communication was made can be resolved.

We agree with appellant that transmission of a report of hearing to the Department's decision maker is a violation of the APA. This was the clear holding of the Court in *Quintanar, supra*.

Both parties agree that remand is the appropriate remedy at this juncture. We agree, and as we have done in the numerous other cases involving this issue, we will remand the matter to the Department for an evidentiary hearing.

ORDER

The decision of the Department is affirmed as to the issue regarding discovery, and the matter is remanded to the Department for an evidentiary hearing regarding the allegation of an ex parte communication, in accordance with the foregoing opinion.⁴

FRED ARMENDARIZ, CHAIRMAN
SOPHIE C. WONG, MEMBER
TINA FRANK, MEMBER
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

⁴This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.